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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,556	01/25/2002	Michael W. Wallace	3301-007	4673

7590

05/20/2004

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1030 S.W. Morrison Street  
Portland, OR 97205

EXAMINER
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ABEL JALIL, NEVEEN

ART UNIT	PAPER NUMBER
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2175

DATE MAILED: 05/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/057,556

Applicant(s)

WALLACE, MICHAEL W.

Examiner

Neveen Abel-Jalil

Art Unit

2175

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

DOV POPOVICI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2, 3.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 101*

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-13 are rejected under 35 U.S.C. 101 because the claims are directed to a non-statutory subject matter, specifically, directed towards an data structure.

The Supreme Court has repeatedly held that abstractions are not patentable. "An idea of itself is not patentable". "Rubber Tip Pencil Co. V. Howard", 20 Wall.498, 07. Phenomena of nature, though just discovered, mental processes, abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work "Gottschalk v. Benson", 175 USPQ 673, 675 (S Ct 1972). It is a common place that laws of nature, physical phenomena, and abstract ideas are not patentable subject matter "Parker v. Flook", 197 USPQ 193, 201 (S Ct 1978).

Database Structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are neither physical "things" nor statutory processes. Applicant's claims are not within any of the statutory classes. "A database structure" should define structural and functional interrelationships between data structures or functional parts and a computer system which permit the data functions to be realized, and is statutory.

### *Claim Rejections - 35 USC § 102*

Art Unit: 2175

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, and 5-19 are rejected under 35 U.S.C. 102(b) as being anticipated by May et al. (U.S. Patent No. 5,544,354).

As to claim 1, May et al. discloses a method for selecting among multiply-categorized items, comprising:

associating for at least one of a plurality of media content items two or more top-level categories (See column 19, lines 7-22, and see column 18, lines 18-39, and see figure 1G, shows all movies titles listed alphabetically under the selected category);

allowing selection by a user of two or more top-level categories from a list of categories (See column 5, lines 26-57, wherein “selecting at least two” reads on “filters the title of the cells that are available at”); and

selecting for presentation to the user a list of only those media content items associated with all of the two or more top-level categories selected by the user (See figure 11, 1105, shows “top-level categories selected from a list” represented by “set up matrix cell list”, also see figure 1E, 107, “Forbidden Planet” is selected as the movie of choice from the listed cells in the top-level category “adventure”).

Art Unit: 2175

As to claim 2, May et al. does not teach wherein the top-level categories include "action" (See figure 1, 2.2.6).

As to claim 3, May et al. does not teach wherein the top-level categories includes "adventure" (See figure 1, 2.2.6).

As to claim 5, May et al. discloses wherein the top-level categories includes "comedy" (See figure 1, 2.2.3).

As to claim 6, May et al. discloses wherein the top-level categories includes "drama" (See figure 1, 2.2.9).

As to claim 7, May et al. discloses wherein the top-level categories includes "foreign" (See figure 1D, 2.2.11).

As to claim 8, May et al. discloses wherein the top-level categories includes "musical" (See figure 1, 2.2.10).

As to claim 9, May et al. discloses wherein the top-level categories includes "sci-fi" (See figure 1, 2.2.8).

Art Unit: 2175

As to claim 10, May et al. discloses wherein the top-level categories includes "romance" (See figure 1, 2.2.12).

As to claim 11, May et al. discloses comprising the steps of:  
associating with each of the plurality of media content one or more items from a submenu list (See column 18, lines 18-39, also see column 5, lines 26-47); and  
allowing selection by a user of one or more items from the submenu list (See column 7, lines 26-66); and  
selecting for presentation to the user a list of only those media content items associated with all of the two or more top-level categories selected by the user that are also associated with the items selected from the submenu list (See column 7, lines 26-66, and see column 20, lines 11-45, wherein "submenu" reads on "level within a database", also see column 2, lines 20-51, prior art).

As to claim 12, May et al. discloses wherein the step of allowing selection from the submenu list occurs after the step of allowing selection of the top-level categories (See column 3, lines 42-53, prior art, also see column 15, lines 11-33).

As to claim 13, May et al. discloses wherein the step of allowing selection of items from the submenu list includes displaying the items to the user, wherein the items displayed is dependent upon the top-level categories selected by the user (See column 5, lines 26-57, also see column 17, lines 5-38, wherein "top-level" reads on "movies").

As to claim 14, May et al. discloses a method for selecting for display content of a display screen, the method comprising the steps of:

displaying a list of top-level categories on a display screen (See figure 1D);  
selecting at least two of the top-level categories from the list (See column 5, lines 26-57, wherein “selecting at least two” reads on “filters the title of the cells that are available at”); and  
presenting on the display screen content responsive to said selecting step (See column 5, lines 26-57).

As to claim 15, May et al. discloses further comprising the steps of:  
selecting at least one item from a submenu list also see figure 1E, 107, “Forbidden Planet” is selected as the movie of choice from the listed cells in the submenu list under top-level category “adventure”); and  
presenting on the display screen data associated with said selected item and said selected top-level categories ( See column 5, lines 26-57, wherein “presenting on the display screen” reads on “preview”).

As to claim 16, May et al. discloses wherein the step of presenting on the display screen content responsive to said selecting step includes the step of displaying of list of content associated with all of said top-level categories selected from the list (See column 19, lines 7-22, and see column 18, lines 18-39, and see figure 1G, shows all movies titles listed alphabetically

under the selected category).

As to claim 17, May et al. discloses wherein the step of presenting on the display screen content responsive to said selecting step includes the step of displaying of list of content associated with exactly all of said top-level categories selected from the list (See column 5, lines 26-57, also see column 17, lines 5-38, wherein "top-level" reads on "movies").

As to claim 18, May et al. discloses wherein the step of presenting on the display screen content responsive to said selecting step includes the step of displaying a list of content associated with any one or more top-level categories selected from the list (See figure 11, 1105, shows "top-level categories selected from a list" represented by "set up matrix cell list", also see figure 1E, 107, "Forbidden Planet" is selected as the movie of choice from the listed cells in the top-level category "adventure").

As to claim 19, May et al. discloses wherein the list of top level categories includes at least four of the following: action, adventure, adult, comedy, drama, foreign, musical, romance and sci-fi (See figure 1D).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person



Art Unit: 2175

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over May et al. (U.S. Patent No. 5,544,354) in view of Swix et al. (U.S. Patent No. 6,718,551 B1).

As to claim 4, May et al. does not teach wherein the top-level categories includes "adult".

Swix et al. teaches wherein the top-level categories includes "adult" (See column 10, lines 40-46, also see figure 3, 302).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified May et al. to include wherein the top-level categories includes "adult".

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified May et al. by the teaching of Swix et al. to include wherein the top-level categories includes "adult" because it allows for targeted selection and user customization and introducing viewer discretion.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Easty et al. (U.S. 6,448,987 B1) teaches graphical user interface for a digital content delivery system using circular menus.

WILEN (U.S. Pub. 2002/0043799 A1) teaches novel television programming guide.

Art Unit: 2175

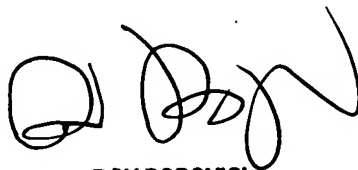
Rowe et al. (U.S. Patent No. 5,623,613) teaches system for displaying programming information.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neveen Abel-Jalil whose telephone number is 703-305-8114. The examiner can normally be reached on 8:00AM-4: 30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dov Popovici can be reached on 703-305-3830. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Neveen Abel-Jalil  
May 13, 2004

  
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